

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Serial No.: 09/740,040
Filed: December 20, 2000
Group Art Unit: 2157
Examiner: Gold, Avi M.
Atty Dkt No.: 20-564

In re Patent Application of:

ZOMBEK et al.

Title: **OPEN SYSTEM INTERCONNECTION (OSI) MESSAGING**

June 15, 2007

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Responsive to the Official Action mailed December 15, 2006,
please enter the following remarks.

The Examiner continues to frustrate the Applicants with a rejection
that ignores accepted definitions within the art of claimed features and ignores
the fact that there would be no reason to modify the primary reference with the
acknowledged deficiency, even if the Examiner were to find prior art that
disclosed the acknowledged deficiency (which as discussed below the Examiner
has failed to do).

REMARKS

Claims 1 and 3-61 remain pending in the application.

Claims 1, 3-10, 15 and 17-61 over Gleeson in view of Dunlop

In the Office Action, claims 1, 3-10, 15 and 17-61 were rejected under 35 U.S.C. §102(b) as allegedly being obvious over U.S. Patent No. 5,446,736 to Gleeson et al. ("Gleeson") in view of U.S. Patent No. 6,721,872 to Dunlop et al. ("Dunlop"). The Applicants respectfully traverse the rejection.

Claims 1, 3-10, 15 and 17-61 recite a protocol gateway to encapsulate a fundamental network protocol underlining each of one or more wireless network protocols.

The Examiner acknowledged that Gleeson fails to disclose "a protocol gateway to encapsulate a fundamental network protocol." (see Office Action, page 3). However, the Examiner relied on a Dunlop to allegedly make up for the acknowledged deficiencies in Gleeson to arrive at the claimed features. The Applicants respectfully disagree.

The Examiner alleged that Dunlop discloses use of a reconfigurable network interface architecture including a device to support network operating protocols and an OSI protocol stack at col. 3, lines 14-34 and col. 4, lines 5-15 (see Office Action, page 4). However, the Examiner has failed to show how Dunlop makes up for the acknowledged deficiency in Gleeson that fails to use encapsulation, i.e., "a protocol gateway to encapsulate a fundamental network protocol."

Dunlop at col. 3, lines 14-34 and col. 4, lines 5-15 simply discloses a network interface card, i.e., a NIC, that is capable of implementing layers of the OSI network model, i.e., a NIC that can communicate with a TCP/IP like network. Implementing layers of the OSI network model is not encapsulation. Dunlop fails to disclose or suggest use of encapsulation, a term of art, within any context. The Examiner appears to rely on features as disclosed by Dunlop without any support that those features are performing encapsulation, a term of art. Thus, even if Dunlop discloses use of a reconfigurable network interface architecture including a device to support network operating protocols and an

OSI protocol stack, the Examiner has not shown Dunlop, nor any other cited prior art reference, discloses use of encapsulation for any reason, much less a protocol gateway to encapsulate a fundamental network protocol underlining each of one or more wireless network protocols, as recited by claims 1, 3-10, 15 and 17-61.

Moreover, claims 1, 3-10, 15 and 17-61 recite a protocol gateway to encapsulate a fundamental network protocol underlining each of one or more wireless network protocols.

As discussed above, the Examiner acknowledged that Gleeson fails to disclose “a protocol gateway to encapsulate a fundamental network protocol.” (see Office Action, page 4). However, the Examiner relies on a Dunlop to allegedly make up for the acknowledged deficiencies in Gleeson to arrive at the claimed features. The Applicants respectfully disagree.

The Examiner alleged that Dunlop discloses use of a reconfigurable network interface architecture including a device to support network operating protocols and an OSI protocol stack at col. 3, lines 14-34 and col. 4, lines 5-15 (see Office Action, page 4). However, the Examiner has failed to show how Dunlop makes up for the acknowledged deficiency in Gleeson that fails to disclose a protocol gateway, much less a protocol gateway performing encapsulation, i.e., “a protocol gateway to encapsulate a fundamental network protocol.”

As discussed above Dunlop simply discloses a network interface card, i.e., a NIC, that is able to implement layers of an OSI network model (see col. 3, lines 50-52 and col. 4, lines 5-15). The Examiner appears to be equating features from Dunlop to Applicants' claimed protocol gateway, without any support within Dunlop. Dunlop fails to disclose a protocol gateway or encapsulation, much less a protocol gateway that performs encapsulation. The Examiner has failed to show how use of a reconfigurable network interface architecture including a device to support network operating protocols and an OSI protocol stack discloses a protocol gateway, much less a protocol gateway to encapsulate a fundamental network protocol underlining each of one or more wireless network protocols, as recited by claims 1, 3-10, 15 and 17-61.

Moreover, the Examiner alleged that it would have been obvious to modify Gleeson with the disclosure of Dunlop because “it is efficient for communication to have a device that supports different protocols” at disclosed at col. 2, lines 13-19. However, Gleeson’s invention is directed toward a connection of a WAN 100 to an enterprise network 102 (see Fig. 1). Gleeson fails to disclose connection of devices to networks using different protocols and therefore would have no purpose for use of a protocol gateway. Thus, the Examiner’s modification of Gleeson is nonsensical. The Examiner would first have to modify Gleeson to use a plurality of devices connected to networks using different protocols, which is unrelated to Gleeson’s invention and again would be a nonsensical modification of Gleeson. The Examiner has failed to address much less refute the fact that modification of Gleeson with the acknowledged deficiency in Gleeson is nonsensical.

Moreover, the Examiner’s motivation alleged that “it is efficient for communication to have a device that supports different protocols” (see Office Action, page 4). However, the Examiner has never provided a reason why one skilled in the art would modify Gleeson in the manner proposed by the Examiner. A device that supports difference protocols is simply a protocol gateway. The Examiner’s motivational statement simply states why protocol gateways are efficient. Thus, the Examiner has failed to provide motivation why one skilled in the art would modify Gleeson with Gleeson’s acknowledged deficiency of a protocol gateway, much less a protocol gateway that performs encapsulation.

Moreover, the Examiner’s motivational statement has never explained why a device that supports different protocols is efficient, efficient at what? The alternative to a device that supports different protocols is a device that does not support different protocols would therefore somehow be inefficient. The Examiner’s motivational statement is nonsensical.

Thus, Gleeson in view of Dunlop fails to disclose, teach or suggest a protocol gateway to encapsulate a fundamental network protocol underlining each of one or more wireless network protocols, as recited by claims 1, 3-10, 15 and 17-61.

Accordingly, for at least all the above reasons, claims 1, 3-10, 15 and 17-61 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,



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